

REMARKS

The application has been reviewed in view of the Office Action mailed on February 23, 2006. Claims 5-7 and 22-27 are pending in the application with claims 5, 11, and 24 being in independent form.

I. Rejection of Claims Under 35 U.S.C. §102(a)

Claims 5-7 and 22-27 stand rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Patent No. 6,860,869 to Dennis. Applicant respectfully submits that the Dennis '869 patent is not prior art to the subject application for the following reasons:

The Dennis '869 patent claims priority to provisional application No. 60/126,356, filed on March 26, 1999. The subject application claims priority to provisional application No. 60/045,412, filed on May 2, 1997. (see the "Continuity Data" on the PAIRS system for the subject application and the Preliminary Amendment concurrently filed with the filing of the application. In the Preliminary Amendment, which is also on the PAIRS system, the application was amended to properly claim priority to the aforementioned provisional application). Applicant disclosed the recited use of the fabric material in a surgical seal in their '412 provisional application.

Furthermore, it appears that Dennis first disclosed the use of fabric in a surgical seal in U.S. patent application Serial No. 09/950,274 which issued as the Dennis '869 patent. The 09/950,274 application is a continuation-in-part application and was filed on September 12, 2001- over four (4) years after Applicant's '412 provisional filing.

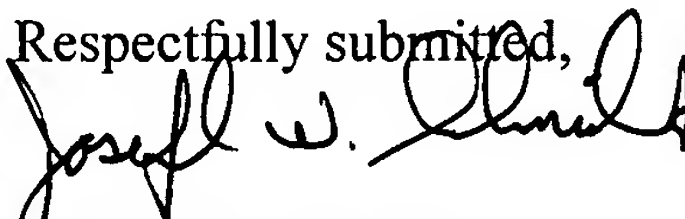
Accordingly, in view of the foregoing, withdrawal of this rejection is hereby requested.

II. Double Patenting

Claims 5-17 and 22-27 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,702,787. A terminal disclaimer is being submitted herewith. Please charge the required fee of \$130.00 to cover the terminal disclaimer fee to Deposit Account No. 21-0550. Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17, at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. **21-0550**. TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.

IV. Conclusion

In view of the above remarks, each of the pending claims is believed to be allowable over the art of record. Should the Examiner believe that a telephone or a personal interview may facilitate resolution of any remaining matters, he/she is respectfully requested to contact Applicant's undersigned representative at the number indicated below.

Respectfully submitted,

Joseph W. Schmidt
Reg. No. 36,920
Attorney for Applicant(s)

CARTER, DELUCA, FARRELL & SCHMIDT, LLP
445 Broad Hollow Road, Suite 225
Melville, New York 11747
Telephone: (631) 501-5703
Facsimile: (631) 501-3526

JWS/td